

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2503067
Decision Date:	4/2/2025	Hearing Date:	03/13/2025
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:

Pro se

Appearance for Nursing Facility:

Scott Nickerson (SNF Administrator); Sue
Durnage (SNF LSW)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge; Failure to Pay
Decision Date:	4/2/2025	Hearing Date:	03/13/2025
Nursing Facility's Rep.:	Scott Nickerson (SNF Administrator); Sue Durnage (SNF LSW)	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated February 19, 2025, the nursing facility informed the appellant that he would be discharged on [REDACTED] 2025 to [REDACTED] MA or a location of his choice because he has "failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility"¹. (130 CMR 610.028; Exhibit 1). The appellant filed this appeal in a timely manner on February 21, 2025. (130 CMR 610.015(B); Exhibit 2). The Board of Hearings scheduled a hearing for March 13, 2025. (Exhibit 3). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

¹ The correct regulatory language in parentheses above is "(or failed to have the MassHealth agency or Medicare pay for)". Medicare is not part of the Medicaid program. The title for the Medicaid program in Massachusetts is "MassHealth". While using the program title "Medicare of Medicaid" is possibly a typographical error, this decision will note the error to provide notice to the facility to consider making a correction to their notices.

The nursing facility issued a notice of discharge to the appellant to [REDACTED] MA or a location of his choice because he has failed to pay his portion of a stay in the nursing facility.

Issue

Whether the nursing facility was correct, pursuant to 130 CMR 610.028, in notifying the appellant that it intended to discharge him to [REDACTED] MA or a location of his choice as he has failed to pay his portion of a stay in the nursing facility.

Summary of Evidence

Two individuals from the skilled nursing facility (SNF), the Administrator and a Licensed Social Worker (LSW) appeared by telephone as well as the appellant. Documents submitted by the facility are incorporated into the hearing record as Exhibit 4.

The appellant was admitted into the skilled nursing facility (SNF) in [REDACTED] 2023. Documents presented by the facility are from December 2024 to a date in February 2025 and include a summary noting the date of the appellant's admission in 2023, attempts to enroll the appellant in programs where he would receive services in the community and information about the patient paid amount calculated by MassHealth. The records do not provide information regarding the reason for the admission or treatment before December 2024.

MassHealth determined the appellant eligible with a patient paid amount. In January 2025, the patient paid amount increased from \$3,147.95 to \$3,195.95 each month. The patient paid amount that began in January 2025 was calculated using income from the Social Security Administration in the amount of \$2,217.00 and a monthly pension of \$1,051.50 for a total monthly income of \$3,268.75. A personal needs allowance in the amount of \$72.80 leaves the appellant with a patient paid amount of \$3,195.95 as of January 2025. As noted at the hearing, this patient paid amount is determined by MassHealth, not the long-term care facility. At the hearing the appellant was informed that the agency pays the balance due to the facility. This could be over \$10,000 paid by the agency for individuals with a patient paid amount over \$3,000.

The administrator testified that the appellant named the facility as a representative payee with the Social Security Administration. This allows the facility to receive a portion of the amount due. However, the appellant has a balance each month for payments prior to naming the facility as the representative payee as well as the balance due after the facility receives funds from the Social Security Administration. The administrator testified that the appellant has an outstanding balance of \$37,034.05.

At hearing, it was noted that the facility did not provide a copy of the notice to a resident

representative. The notice states copy to resident representative "SELF". The administrator testified that they have the appellant's sister listed as a health care proxy but do not have an address. The records presented by the facility are only from December 2024 so it is not clear what, if any, information the facility has about the individual named as the appellant's health care proxy. The administrator testified that the appellant is able to make his own decisions and did not feel that it would be appropriate to send the notice to another party due to privacy requirements under the Health Insurance Portability and Accountability Act (HIPAA).

The notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the "Local Legal Services Office" for the appellant's service area. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.

The administrator testified that they have attempted to obtain other services for the appellant such as assisted living or a group home but have not been able to find appropriate services. The administrator testified that the appellant is independent with activities of daily living and instrumental activities of daily living. However, the discharge would involve working with a visiting nurses association (VNA) agency if the appellant is discharged. As of the date of the hearing, no one indicated whether any plans were in place.

Nursing notes from January 2025 indicate that the interdisciplinary team decided to continue with the appellant's plan of care. Notes from January 2025 state that speech therapy was consulted regarding the appellant's condition upon a return to the facility. The appellant often enjoys signing out and sitting outside. The January 2025 assessment noted that the appellant had slower speech but records appear to indicate that the appellant's vital signs were within normal limits. The attending physician was made aware of the appellant's condition and notes indicate that speech therapy was working with the appellant but hesitant on increasing food texture due to a question of personal recreational activities or effects on the appellant's safety and performance upon a return to the facility.

In February 2025, a video fluoroscopic swallow study showed mild oral and more moderate pharyngeal dysphagia. Progress notes state that based on the test results and the appellant's current medical and overall status, the appellant's risk for aspiration/penetration remains significantly elevated. Notes indicate that concerns remain regarding the appellant's intake/ability to meet nutritional/hydration needs and self-willingness to meet those needs. The appellant did not demonstrate consistent, safe swallow function for safe dietary texture advancements. The plan was to complete ongoing education and instruction to facilitate full carryover of aspiration precautions and general safe swallow guidelines/techniques.

In February 2025, the appellant went to a neurological appointment where they recommended an electromyography (EMG), ordered a brain MRI and a continuation of physical therapy and speech therapy. The facility's attending physician was aware and in agreement with the

recommendations.

The appellant acknowledged that he has not paid the facility the full amount due as he did not agree with the amount calculated by MassHealth. The appellant was informed that the decision regarding the calculation of a patient paid amount is made by MassHealth, not the facility. The appellant was informed that he could contact MassHealth to discuss the calculation of the patient paid amount and provide them with information if he would like the agency to adjust that amount. The appellant was informed that he could appeal an agency decision, however, that issue was not within the scope of this appeal. The appellant testified that he is independent with activities of daily living.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant was admitted into the skilled nursing facility (SNF) in [REDACTED] 2023.
2. The facility presented documents from December 2024 to a date in February 2025.
3. MassHealth determined the appellant eligible with a patient paid amount.
4. In January 2025, the patient paid amount increased from \$3,147.95 to \$3,195.95 each month.
5. The patient paid amount that began in January 2025 was calculated using income from the Social Security Administration in the amount of \$2,217.00 and a monthly pension of \$1,051.50 for a total monthly income of \$3,268.75.
6. Allowing a personal needs deduction in the amount of \$72.80 left the appellant with a patient paid amount of \$3,195.95 as of January 2025.
7. The appellant named the facility as a representative payee with the Social Security Administration which allows the facility to receive part of the amount due.
8. The appellant has a balance of \$37,034.05 due to the facility.
9. The notice from the facility was sent to the appellant alone.
10. The facility has information indicating that the appellant's sister is a health care proxy.
11. The notice lists contact information for the Massachusetts Legal Assistance Corporation

in [REDACTED] Massachusetts as the “Local Legal Services Office” for the appellant’s service area.

12. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.
13. The discharge would involve working with a visiting nurses association (VNA) agency if the appellant is discharged. As of the date of the hearing, no one indicated whether any plans were in place.
14. In January 2025, an interdisciplinary team decided to continue with the appellant’s plan of care.
15. In January 2025, speech therapy was consulted regarding the appellant’s condition upon a return to the facility.
16. The appellant often enjoys signing out and sitting outside.
17. A January 2025 assessment noted that the appellant had slower speech after going outside.
18. In January 2025, speech therapy was working with the appellant but hesitant on increasing food texture due to a question of personal recreational activities or effects on the appellant’s safety and performance upon a return to the facility.
19. In February 2025, a video-fluoroscopic swallow study showed mild oral and more moderate pharyngeal dysphagia.
20. Based on the test results and the appellant’s current medical and overall status, the appellant’s risk for aspiration/penetration remains significantly elevated.
21. In February 2025 concerns remain regarding the appellant’s intake/ability to meet nutritional/hydration needs and self-willingness to meet those needs.
22. In February 2025, the appellant did not demonstrate consistent, safe swallow function for safe dietary texture advancements.
23. A February 2025 plan of care was to complete ongoing education and instruction to facilitate full carryover of aspiration precautions and general safe swallow guidelines/techniques.

24. In February 2025, the appellant went to a neurological appointment where they recommended an electromyography (EMG), ordered a brain MRI and a continuation of physical therapy and speech therapy.
25. The facility's attending physician was aware and in agreement with the recommendations.

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.028(A) which governs the rules for actions initiated by a nursing facility, a resident may be transferred or discharged from a nursing facility only when:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility;
- (3) the safety of individuals in the nursing facility is endangered;
- (4) the health of individuals in the nursing facility would otherwise be endangered;
- (5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

In the present case, the facility indicated that appellant has failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay at the nursing facility. While this is an acceptable reason for discharge, the facility did not meet the regulatory requirements related to discharging a resident.

Pursuant to 130 CMR 610.028(C), before a nursing facility discharges or transfers any resident, the nursing facility must handdeliver to the resident and mail to a designated family member or legal representative, if the member has made such a person known to the facility, a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason or reasons for the discharge or transfer;
- (3) the effective date of the discharge or transfer;
- (4) the location to which the resident is to be discharged or transferred;
- (5) a statement informing the resident of his or her right to request a hearing before the MassHealth agency including:

- a. the address to send a request for a hearing;
 - b. the time frame for requesting a hearing as provided for under 130 CMR 610.029; and
 - c. the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
 - (7) for nursing facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6041 et seq.);
 - (8) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. § 10801 et seq.);
 - (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal services office; and
 - (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.

The notice on appeal is flawed for at least two reasons.

First, while the facility did deliver the appellant a notice of discharge, they failed to mail the notice to a designated family member or legal representative and it was not clear whether the appellant's records provided contact information for the individual named as the appellant's health care proxy as the facility elected to provide records from December 2024 forward which did not contain any of the initial admission information. The representatives from the facility acknowledged that they knew the name of the appellant's health care proxy but did not feel that it was appropriate to send her a copy of the notice of discharge due to privacy requirements under Health Insurance Portability and Accountability Act (HIPAA). Records presented by the facility regarding the appellant's history and condition, and testimony presented by the appellant at hearing indicate that the appellant would benefit from the notice being issued to the designated family member or legal representative that the facility has on file. The regulations contain protective provisions such as this to protect the rights of this vulnerable population. If the designated family member or legal representative does not appear or the appellant chooses to proceed on his own, that is his decision, not that of the facility.

Second, the notice lists contact information for the Massachusetts Legal Assistance Corporation in [REDACTED] Massachusetts as the "Local Legal Services Office" for the appellant's service area.

The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office. The regulations at 130 CMR 610.028(C)(9) state that the notice should contain the address of the nearest legal services office.

In addition to these notice requirements, the facility did not demonstrate that they have provided sufficient preparation and orientation to the appellant to ensure a safe and orderly transfer from the facility to another safe and appropriate place. Pursuant to M.G.L. ch. 111, § 70E, a resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility licensed under section 71 of this chapter, unless a referee determines that the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. The representatives from the facility clearly want to find a safe and appropriate location for the appellant and have an appropriate plan. However, they have not done so at this time. (MGL ch. 111 § 70E).

Federal regulations also require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge. (42 CFR 483.15(c)(7)). This orientation must be provided in a form and manner that the resident can understand. Federal regulations at 42 CFR 483.21(c)(1) speak to the discharge planning process. These regulations require the facility to involve the resident and resident representative in the development of the discharge plan and inform the resident and resident representative of the final plan. (130 CMR 483.21(c)(1)(v)). In this case, records indicate that the appellant still requires services provided in the nursing facility as well as testing related to his current conditions. The records presented from the facility do not provide a clear history of the initial admission and ongoing treatment. The records note that in January 2025, an interdisciplinary team determined that the appellant requires a continuation of services at the facility. Federal guidelines also state that the planning must ensure the discharge destination “meets the resident’s health and safety needs”. (State Operations Manual, Appendix PP). Testimony and evidence presented at hearing do not appear to list a destination that would meet the health and safety needs of the appellant.

This appeal is approved to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge. The facility may issue a proper notice and take proper action at any time.

The appellant should be aware that the facility appears to have adequate grounds for discharge as he has failed to pay. Simply making notice and planning errors does not make the reason for discharge incorrect, especially those that are not challenged by the appellant such as a failure to pay. While this appeal is approved, this approval does not guarantee that the appellant can continue to refuse payment of the patient paid amount determined by MassHealth.

Order for Nursing Facility

Rescind the discharge notice issued on February 19, 2025.

Compliance with this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

[REDACTED]